



THE DEFERRED DREAM: AN ANALYSIS OF FRAMEWORKS FOR INSTITUTING REPARATIONS THROUGH A CASE STUDY OF NEW JERSEY, THE SLAVE STATE OF THE NORTH

Tiani Boapeah*

TABLE OF CONTENTS

ABSTRACT 143
I. INTRODUCTION: THE DEFERRED DREAM 143
II. "DIGNITY WRONGS:" THE CASE FOR BLACK REPARATIONS 145
A. Critiques & Justifications for Reparations 145
B. Post Slavery Injustices 147
C. Present Day Inequalities 149
III. THEORIES FOR CHANGE: PROPOSED METHODS FOR INSTITUTING REPARATIONS 151
A. The Puzzle Pieces of a Reparations Plan 152
B. The Regulatory Reparations Framework 153
C. The Municipality Framework 156
D. The International Human Rights Framework 160
IV. CORRECTIVE JUSTICE — NEW JERSEY: THE SLAVE STATE OF THE NORTH 161
A. What Happened & Who Did It? 162
B. Corrective Justice through Reparations Approaches 164
1. Regulatory Reparations 164
2. Municipality Approach 165
3. International Law Framework 166
V. CONCLUSION 167

* J.D. Candidate, Rutgers Law School, May 2024. I want to thank Professor David Troutt and Professor David Lopez for their assistance and guidance throughout the process of formulating this comment. I am also grateful to my family and friends for their unwavering love, support, and encouragement.

ABSTRACT

Reparations for Black Americans has become a recent hot topic within American social discourse. Some deny the pertinence of reparations due to the attenuation between slavery and would-be modern day recipients. However, proponents of reparations argue that in order to adequately address the impacts of slavery, which has disproportionately affected Black American life, providing reparations is more than justifiable. This Comment, functioning as an advocacy piece grounded in the argument for reparations, seeks to accomplish two things: (1) create the case for Black reparations through a dignity wrongs analysis and (2) test the feasibility of theories to institute reparations through a state case study in a geographic region typically left untouched from slavery discourse but with interesting ties to it.

I. INTRODUCTION: THE DEFERRED DREAM

Reparations is the process of providing redress for unspeakable injustices conducted to a particular group of people.¹ Although not a new subject,² the idea of reparations for Black Americans,³ usually thought a deferred dream, has become a highly discussed subject.⁴ Most of the ensuing conversation on the matter has centered on whether reparations

1. RASHAWN RAY & ANDRE PERRY, WHY WE NEED REPARATIONS FOR BLACK AMERICANS, BROOKINGS 4 (Apr. 2020).

2. See DeNeen L. Brown, *40 Acres and a Mule: How the Direst Reparations for Slavery Ended in Betrayal*, WASH. POST. (Apr. 15, 2021, 7:30 AM), <https://www.washingtonpost.com/history/2021/04/15/40-acres-mule-slavery-reparations/>. The first notion of reparations for Black Americans was initially a post-Civil War promise. See *id.* This agreement, later to be known as the “forty acres and a mule promise,” was memorialized in Special Field Orders No. 15 and would have authorized the confiscation of Confederate land to thousands of Black families. *Id.* However, shortly after the assassination of Abraham Lincoln, the order was dashed, and with it, the opportunity of potential redress for freed slaves. *Id.*

3. This Comment will utilize the term Black Americans rather than African Americans because even those that are Black and do not descend from slaves from the United States, “have been subjected to the racial caste system and are likely due reparations at some level.” Kerri M. Gefeke, *America to Me – A Public Nuisance Reparations Framework Through the Lens of the Tulsa Massacre*, 55 UIC L. REV. 681, 721 (2022).

4. See Stolberg, *supra* note 1.

are justifiable, what reparations can legally consist of, and how to successfully implement a plan.⁵

Those in favor of providing reparations to Black Americans have described the endeavor as a dual task.⁶ First, there must be acknowledgement of the wrongdoing that has placed a specific group in their current social and economic turmoil.⁷ Second, there must be a formulation of initiatives and programs to remedy these wrongdoings.⁸ Grounded on the belief that Black Americans are entitled to reparations, and recognizing the need for a substantive strategy, this Comment seeks to take on this two-pronged task by: (1) through a dignity wrongs analysis, laying the foundation that describes the wrongdoing that entitles Black Americans to reparations and (2) analyzing theoretical frameworks for instituting reparations.

Part I, through a dignity wrongs analysis, will describe the social and political wrongdoings that justify reparations for Black Americans. Part II will analyze theoretical frameworks, Regulatory Reparations, the Municipality Reparations Approach, and the International Law model, that can be used in instituting reparations. Using New Jersey as a case study, Part III will put these theories to the test to judge their feasibility.

This Comment does not endeavor to propose one approach or state that a particular framework should be pursued over another, but rather, seeks to serve as an advocacy piece within the reparations dialogue. Additionally, some parts of this Comment will feature an anecdotal story. Although this use of narrative has been criticized within legal scholarship,⁹ its use in advocacy, which this Comment is undoubtedly centered upon, has shown considerable impact.¹⁰ Furthermore, there is no better way to fully depict an issue than through the lens of its sufferer.

5. *See id.*

6. *See* Eric J. Miller, Statement before the House Judiciary Comm. Subcomm. on the Const., Civ. Rts., and Civ. Liberties Hearing on HR40 and the Path to Restorative Just., 116th Cong.. 2 (June 19, 2019) (statement of Eric J. Miller, Professor of Law and Leo J O'Brien Fellow, Loyola Marymount University).

7. *See id.*

8. *See id.*

9. Will Breland, *Acres of Distrust: Heirs Property, the Law's Role in Sowing Suspicion Among Americans and How Lawyers Can Help Curb Black Land Loss*, 28 GEO. J. ON POVERTY LAW & POL'Y 377 n.1 (2021).

10. *See id.*

II. “DIGNITY WRONGS”: THE CASE FOR BLACK REPARATIONS

In 1783, the freedwoman Belinda Royall petitioned the commonwealth of Massachusetts for reparations. Belinda had been born in modern-day Ghana. She was kidnapped as a child and sold into slavery. She endured the Middle Passage and 50 years of enslavement at the hands of Isaac Royall and his son. But the junior Royall, a British loyalist, fled the country during the Revolution. Belinda, now free after half a century of labor, beseeched the nascent Massachusetts legislature... Belinda Royall was granted a pension of 15 pounds and 12 shillings, to be paid out of the estate of Isaac Royall—one of the earliest successful attempts to petition for reparations.¹¹

Reparations has been viewed by some within the field as a tool of uncovering race-based discriminatory structures within American society and institutions. This theory, “dignity wrongs,”¹² states that these specific race-based wrongs are distinct because they are “inflicted through (1) race-targeted institutional action (2) destructive of the group’s social, economic, political and cultural standing or its power to engage in self-governance.”¹³ Further, these wrongs persist through government actions, intended to systematically exclude and subordinate a group based on race, and government inaction, through the withdrawal of protections for these vulnerable groups.¹⁴ Due to its localized nature, a solution to a dignity wrong is to provide details on “what happened and who did it.”¹⁵ Through a dignity wrongs analysis, this part will describe the legal and social wrongdoings that make modern day reparations justifiable.

A. *Critiques & Objections to Reparations*

The core justification for reparations raised by proponents is the existence of legalized chattel slavery in America and subsequent

11. Coates, *supra* note 1.

12. Miller, *supra* note 7, at 4–5.

13. *Id.* at 4.

14. *Id.* at 5.

15. *Id.* In answering “what happened and who did it” within a dignity wrongs analysis, there must be an identification of “the specific ways in which African Americans have been injured and traumatized,” and providing a kind of corrective justice to redress the damage. *Id.*

injustices faced by Black Americans that persist today.¹⁶ However, this core justification also presents a major point raised by opponents of reparations; the issue of causation.¹⁷ Critics argue that the injury of slavery has become so attenuated throughout the years that the link from slaves and slave holders to those living today is too far removed for a remedy to be given.¹⁸ Attenuation arguments stem from three major points.¹⁹ First, there is a lack of connection of harm between those previously enslaved and present-day Black Americans.²⁰ Second, there is a lack of relation between those that were slavers or benefited from slavery and modern-day citizens and the government.²¹ Third, there is no link between the admitted harmful act of slavery and present-day injustices.²² These attenuation arguments operate to create not only doubt but legal and moral hurdles to the viability of any reparation proposal.²³

However, the issue of causation and attenuation stems from Black Americans seeking reparations through formal trial or settlement.²⁴ Another group that has faced this issue are Native Americans who have only seen redress through treaties.²⁵ Creating a similar “treaty” or orchestrating a policy or initiative like those later mentioned within this Comment may overcome the causation arguments raised. Nevertheless,

16. See *Reparations*, NAACP, <https://naacp.org/resources/reparations> (last visited Dec. 30, 2023).

17. See generally Kaimipono D. Wenger, *Causation and Attenuation in the Slavery Reparations Debate*, 40 U. S.F. L. REV. 279 (bepress Legal Series, Working Paper No. 778, 2005); see also Jane Kim, *Black Reparations for Twentieth Century Federal Housing Discrimination: The Construction of White Wealth and the Effects of Denied Black Homeownership*, 29 B.U. PUB. INT. L.J. 135, 136 (2019). Senate Majority Leader Mitch McConnell was quoted saying “I don’t think reparations for something that happened 150 years ago for whom none of us currently living are responsible is a good idea.... We’ve tried to deal with our original sin of slavery by fighting a civil war, by passing landmark civil rights legislation. We elected an African American president.” Kim, *supra*.
18. See Wenger, *supra* note 18, at 3; see also Calvin Massey, *Some Thoughts on the Law and Politics of Reparations for Slavery*, 24 B.C. THIRD WORLD L.J. 157, 166 (2004).

19. See *id.* at 15.

20. *Id.*

21. *Id.* Some argue that it would be unfair to those that are new to the United States or populations that also face discrimination and injustice to be held to the status of wrongdoer. See Richard A. Epstein, *Case Against Reparations*, B.U. L. REV., 1177, 1188 (2002). This also does not include descendants of Northern Union soldiers who may feel like “they have paid reparations in blood” due to the death of 300,000 soldiers during the Civil War. *Id.*

22. Wenger, *supra* note 18, at 15.

23. See *id.* at 31.

24. See *id.* at 34.

25. See *id.*

to overcome these arguments, and provide a causal link between the cruelty of slavery and current injustices faced by Black Americans, this section will detail the economic and social disparities that have impacted Black Americans from the ending of Emancipation to present day.²⁶

B. Post Slavery Injustices

The birth of this new racial caste system, fully supported by the American government following slavery impacted all of Black American life and has led to disparate outcomes in areas such as “economics, health, education, wealth accumulation, and life span.”²⁷ Practices such as convict leasing, Jim Crow, redlining, and other government-sponsored actions, stifled Black American social and economic life immediately following Emancipation.²⁸

De jure discriminatory policies have held large influence over Black American life. Indeed, the American government’s support in the disenfranchisement of the Black community post-slavery is well documented. This is seen in actions taken by federal government agencies such as the Federal Housing Administration,²⁹ Veterans

26. It has been noted that utilizing certain tools such as statistical evidence could present a connection between the harm suffered by slaves and their later descendants. *See id.* at 48. Data that shows that descendants of slaves suffer from lower rates of economic prosperity as compared to the rest of the population, coupled with research that shows where slave descendants would be absent slavery could provide a strong case of causation, and thus, overcome this contention. *See id.* at 48. Providing statistics on where Black Americans would be in society but-for slavery would be a difficult hurdle to overcome as there is no previous disposition to which Black American life can be compared to. However, showing the consistent disposition Black Americans have been in since the ending of slavery compared to white counterparts can make up for what is lacking on this front.

27. Brian G. Gilmore & Hannah D. Adams, *The Case for a Reparations Clinic: A Proposal for Investigation, Documentation, and Remediation of Historic Housing Discrimination Through the Law School Clinic Model*, 2018 MICH. L. REV. 1309, 1316 (2018).

28. *See* Christopher Burton, *3/5ths to 1/10th, How to Make Black America Whole: Exploring Congressional Act H.R. 40 -- Commission to Study and Develop Reparation Proposals for African-Americans Act*, 54 UIC J. MARSHALL L. REV. 530, 534–55 (2021).

29. *See* Kim, *supra* note 18, at 140. During the New Deal Era, up until the Fair Housing Act and later amendments in 1988, housing discrimination was both overt and covert. *See id.* Discriminatory practices during the time centered around three main forms: (1) “redlining,” (2) exclusion of Black Americans from “low-interest, government-subsidized and government-insured mortgages and development loans,” and (3) racial covenants that excluded Black Americans from housing and land developments. *Id.* Due to Federal Housing Commission policies, Black Americans have been unable to benefit from over \$1.239 quintillion due to loss of “federal investment and equal access to property ownership.” *Id.* Thus, many have stated “no agency of the United States government has had a more pervasive and powerful impact” than the Federal Housing Administration.” *Id.*

Administration,³⁰ and United Public Health Service.³¹ This is also seen in Supreme Court decisions which have been pivotal in promoting inequities within schools.³² The culmination of these policies have prevented Black Americans from able to generate wealth and assets to compete in American life.³³ Moreover, it is important to note that while the South has been depicted as the architect and main villain of racism, the entire nation was engulfed in a campaign of Black oppression.³⁴

30. See Victoria Ebner, *Veterans Affairs Has Denied Benefits to Black People at Higher Rates for Years, Lawsuit Alleges*, CNBC (Nov. 28, 2022, 6:14 AM), <https://www.cnbc.com/2022/11/28/veterans-affairs-has-denied-benefits-to-black-people-at-higher-rates-for-years-lawsuit-alleges.html>. According to VA records, the average denial rate for Black veterans seeking disability compensation is 5.3% higher than their white counterparts. *Id.* This persists in acceptance rates where the disparity is at 6.8%. *Id.*

31. See Gefeke, *supra* note 4, at 691. In 1972 it was revealed that the United States Public Health Service has conducted studies on syphilis using Black men within the Tuskegee Institute. *Id.* None of the participants were told the true nature of the study. *Id.* This was all done under the knowledge of governmental health organizations such as the “Centers for Disease Control, American Medical Association, and National Medical Association.” *Id.* This, along with other “dissections and medical examinations” conducted at the expense of Black people, has caused Black Americans to mistrust the healthcare system, and subsequently, led to health disparities. J. Corey Williams, *Black Americans Don't Trust Our Healthcare System — Here's Why*, HILL (Aug. 24, 2017, 11:20 AM), <https://thehill.com/blogs/pundits-blog/healthcare/347780-black-americans-dont-have-trust-in-our-healthcare-system/>.

32. Disparity in school funding was essentially given the green light by the Supreme Court in *San Antonio v. Rodriguez*. See Moriah Mendicino, *Amerikkkan Schools: How Anti-Black Racial Inequity is Perpetuated by the Public School System with Help from Modern Courts*, 23 RUT. RACE & L. REV. 451, 464–66 (2022). In *San Antonio v. Rodriguez*, the Court was tasked with assessing whether Texas’s method of school funding, which relied on property taxes and led to substantial disparities between high and low property valuation areas, violated the Fourteenth Amendment. *Id.* at 464. Despite acknowledging these disparities, the Court stated that “because education is not a fundamental interest, and because wealth (or lack thereof, in this case) is not a suspect classification it would be inappropriate to apply the strict scrutiny standard.” *Id.* at 465. Thus, utilizing a rational basis review, the Court held that it was not unconstitutional for states to provide more funds to schools within wealthy areas compared to schools within areas with low property valuation. *Id.* This ruling effectively sanctioned disparate funding based on the area a student lives in. See *id.* Considering Black students usually live within these low property valuation areas; they are the most likely to be affected by poorly funded schools. See *id.* at 466–68. These effects result in “worse teachers, facilities, materials and educational outcomes” for Black students compared to their white peers. *Id.* at 468.

33. Joe R. Feagin, *Documenting the Costs of Slavery, Segregation and Contemporary Racism: Why Reparations Are in Order for African Americans*, 20 HARV. BLACKLETTER L.J., 49, 56 (2004).

34. See Gilmore & Adams, *supra* note 28, at 1315. Segregation extended to every social situation in which the races may come into contact. See Leon F. Litwack, *Jim Crow Blues*, 18 OAH MAG. HIST. 7, 8 (2004).

C. Present Day Inequalities

The culmination of these “*de jure* and *de facto*” discriminatory policies have prevented Black Americans from being able to generate wealth and assets to compete in American life.³⁵ In 2019, researchers Raj Chetty, Nathaniel Hendren, Maggie Jones, and Sonya R. Porter analyzed data from over twenty million families to determine “how race currently shapes opportunity in the U.S.”.³⁶ The results from their study are foreseeable but off-putting.

Regardless of family dynamic, Black Americans fall behind their white equivalents in income, wealth, and education.³⁷ Although other races are moving forward in income distribution, Black Americans are not.³⁸ This income gap is primarily driven by Black men who, even if they were brought up in households with comparable income, still earn less than their white counterparts.³⁹ This economic disparity has proven to be generational.⁴⁰

Further, aside from Native American Indians, Black American children have a higher likelihood of downward mobility than other racial groups.⁴¹ This causes them to be “stuck in place” for generations.⁴² Black children born in the lowest of income brackets, have only a 2.5% chance of moving to a greater income bracket compared to the 10.6% chance of white children.⁴³ Further, white college graduates obtain seven times more in wealth.⁴⁴ Even white high school dropouts own more wealth than Black college graduates.⁴⁵

Outside of economic inequalities, there are a multitude of social discrepancies as well. First, one cannot miss the inherent racial

35. Feagin, *supra* note 34, at 56.

36. RAJ CHETTY, ET AL., RACE & ECON. OPPORTUNITY IN THE UNITED STATES: AN INTERGENERATIONAL PERSPECTIVE 1 (2019).

37. *See id.* at 3.

38. *See id.* at 2. The only other race that does not face upward mobility are Native American Indians. *See id.*

39. *See id.* at 3.

40. *See id.*

41. *See id.* at 2.

42. CHETTY, *supra* note 37, at 3.

43. *Id.* at 2.

44. RAY & PERRY, *supra* note 2, at 2.

45. *See id.* The author of this report references a report by William Darity and Darrick Hamilton which points to this statistic in refuting the argument that Blacks should change their own individual behavior and take “personal responsibility” in closing the racial divide. *Id.*; *see also* WILLIAM DARITY JR., ET AL., WHAT WE GET WRONG ABOUT CLOSING THE RACIAL WEALTH GAP (SAMUEL DUBOIS COOK CENTER ON SOCIAL EQUITY ed., 2018).

disparities within the criminal justice system.⁴⁶ Black Americans are imprisoned five times more than white Americans.⁴⁷ These inequalities also persist in education.⁴⁸ Research has shown that compared to white students, students who are Black are “more likely to be suspended or expelled” from school.⁴⁹ Further, they are also less likely to be put into gifted programs.⁵⁰ The gaps in test scores amongst Black and white students have also been noted as “substantial.”⁵¹

These continued disparities have been documented as deriving from cultural misunderstandings or implicit biases⁵² that affect thoughts and

46. Historically, Black Americans have been targets of criminal justice system. *See* ELIZABETH HINTON ET AL., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM, 2 (Vera Inst. of Just. ed., 2018). Following emancipation, Black Americans were made targets for various forms of policing and imprisonment. *See id.* Many laws utilized the loophole within the Thirteenth Amendment which stated that “citizens cannot be enslaved unless convicted of a crime.” *Id.* This allowed for newly emancipated Black people to be used to fulfill labor needs they were just freed from. *See id.* Further, surveillance measure such as Black Codes, which were laws that forced former slaves into labor systems that were like those utilized in slavery, or vagrancy laws, which would arrest any Black person that could not prove that they worked for a white employer, also served to put Blacks within bondage. *See id.* Arrested Black Americans would then fall prey under the system of convict leasing which allowed for a basic “enslavement of people who had been convicted of a crime.” *Id.* Post-Civil Rights era, initiatives such as the “War on Crime,” which sought to modernize American law enforcement, and the “War on Drugs,” which sought to overly criminalize habitual drug users, continued this trend. *See id.* at 3. Indeed, this over criminalization of Black people has dubbed the modern criminal justice system “The New Jim Crow.” *See generally* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (The New Press 2010) (exposing the racial discriminatory nature of the criminal justice system).

47. ASHLEY NELLIS, THE SENT’G PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 6 (2021). Blacks are incarcerated “at a rate of 1240 per 100,000 [compared to the rate of] white people ... of 261 per 100,000.” *Id.*

48. Most forget that as late as the 1960s most students of color were educated in segregated schools funded at lower rates than schools that served white students. *See* Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, BROOKINGS (Mar. 1, 1998), <https://www.brookings.edu/articles/unequal-opportunity-race-and-education/>. Further, these same students of color were outright excluded from many higher education institutions. *Id.*

49. Kirsten Weir, *Inequality at School: What’s Behind the Racial Disparity in Our Education System*, AM. PSYCH. ASS’N (Nov. 2016), <https://www.apa.org/monitor/2016/11/cover-inequality-school>.

50. *See id.*

51. CHETTY, *supra* note 37, at 3.

52. *See id.* Those specialized in the area have stated that these outcomes derive from cultural misunderstandings or implicit biases that can affect thoughts and behaviors. *See id.* Implicit bias stems from “groupism” within race-based societies. Zaretta Hammond, *Is Implicit Bias Racist?: Three Things Every Teacher Should Know About Implicit Bias and the Brain*, LEARNING FOR JUST. (June 1, 2015),

behaviors. Implicit bias has been shown to be a consistent effect of systemic racism.⁵³ Although opponents of reparations have also argued that social programs and affirmative action have healed the wounds left from slavery and Jim Crow,⁵⁴ this data shows there is still a long way to go. Indeed, as opponents ask for "someone [to] come[] up with a convincing explanation" for why reparations are justifiable given the racial progress the country has made,⁵⁵ one can also ask for someone to come up with a convincing explanation for why all of the well documented statistical disparities that Black Americans continue to face across the board should also be disregarded. In summary, though Black Americans today have not witnessed the horrors of slavery, the disparities of today are inevitably linked to it, and thus, Black Americans continue to suffer from its effects. This without a doubt presents a valid case for why reparations are due.

III. THEORIES FOR CHANGE: PROPOSED METHODS FOR INSTITUTING REPARATIONS

When Clyde Ross was still a child, Mississippi authorities claimed his father owed \$3,000 in back taxes. The elder Ross could not read. He did not have a lawyer. He did not know anyone at the local courthouse. He could not expect the police to be impartial. Effectively, the Ross family had no way to contest the claim and no protection under the law. The authorities seized the land. They seized the buggy. They took the cows, hogs, and mules.

<https://www.learningforjustice.org/magazine/is-implicit-bias-racist>. The "in-group," or the dominant culture of this society, will create "out-groups" based on certain characteristics such as race. *Id.* In race-based societies, systems of inequity are maintained through negative messages that would dehumanize those within the "out-group." *Id.* These messages are then taken in by members of the in-group and then downloaded into the brain's fear system. *See id.* This inevitability leads to the phenomenon of implicit bias or "the unconscious attitudes and beliefs that shape our behavior toward someone perceived as inferior or as a threatening outsider." *Id.*

53. *See generally* Keith Payne & Jason W. Hannay, *Implicit Bias Reflects Systemic Racism*, 25 TRENDS IN COGNITIVE SCI. 927 (Nov. 2011) (arguing that "implicit bias can be considered a cognitive reflection of systemic racism in the environment").

54. *See* Epstein, *supra* note 22, at 1189. In his article, *Case Against Reparations*, Epstein argues several shortcomings of the reparation's argument, one of which is that social welfare programs and affirmative action programs have "healed" the injustice faced by Black Americans before 1954. *Id.*

55. *Id.*

And so for the upkeep of separate but equal, the entire Ross family was reduced to sharecropping.⁵⁶

In conjunction with discussions on whether reparations are justifiable come conversations of what reparations can and should entail. This part seeks to complete the second prong of implementing reparations⁵⁷ by analyzing proposed frameworks for instituting reparations in further detail.

A. *The Puzzle Pieces of a Reparations Plan*

The ideas advanced for reparations have a goal of providing to Black Americans the ability to build wealth, eliminate debt, and overcome social inequities.⁵⁸ Proposals such as individualized payments, providing affordable education, or establishing housing reform can be viewed as puzzle pieces within a full reparations plan. This part will discuss these pieces further.

Individualized stipends to descendants of slaves would account for lost wages and damages to descendants of enslaved people.⁵⁹ Scholars theorize that these damages could eliminate the current racial wealth gap.⁶⁰ However, this suggestion is, without a doubt, the least popular of the methods proposed.⁶¹ Those against individualized payments question how to determine the amount to be distributed and how to determine who is eligible for the payments.⁶²

Through tuition remission, Black Americans would be able to obtain tuition-free degrees from public and private colleges and universities.⁶³ Advocates for this proposal point to the impact that tuition remission could have in presenting more social net worth access.⁶⁴ Considering that Black Americans are common recipients of unsubsidized loans, and that graduates of Historically Black Colleges and Universities (“HBCUs”) are more likely to be granted subprime loans with high interest rates, providing debt forgiveness to about forty percent of Black Americans that

56. Coates, *supra* note 1.

57. *See supra* text accompanying note 98.

58. *See* RAY & PERRY, *supra* note 2, at 4.

59. *See id.* at 4.

60. *See id.*

61. *See* Burton, *supra* note 29, at 554–55.

62. *See id.*

63. *See* RAY & PERRY, *supra* note 2, at 4.

64. *See id.*

are encumbered by student loans can be essential in achieving this.⁶⁵ Although higher education institutions have already begun the work in seeing this method into fruition,⁶⁶ there is still much work to be done.

Providing housing revitalization grants could help improve homes in black neighborhoods that have been neglected from government and corporate investment. Predatory lending practices, low fixed interest rates, and property tax caps have caused Black neighborhoods to become undervalued.⁶⁷ Further, the newer phenomenon of gentrification has caused Black people to be “priced out of neighborhoods they helped to maintain.”⁶⁸

However, these three ideas only address a particular issue faced by Black Americans. For reparations to be effective, a full-scale plan addressing all concerns faced by Black Americans is needed. The frameworks presented in this section endeavor to address such broader concerns.

B. The Regulatory Reparations Framework

The regulatory reparations framework places an emphasis on utilizing executive branch agencies to combat prevailing concerns of the Black community and/or provide redress for past administrative actions.⁶⁹ President Biden’s 2021 Executive Order, Advancing Racial

65. *Id.* Critiques further this argument by questioning if Black Americans who have achieved economic success should benefit from a policy such as this. *See id.* However, Burton highlights that the goal of reparations is “to atone not to enrich”. Burton, *supra* note 29, at 535.

66. *See id.*; RAY & PERRY, *supra* note 2, at 4. Aiming to atone for their contributions to slavery, universities such as Georgetown and Princeton, whose endowments were established and funded through the sale of slaves, grant descendants of slaves “full rights and benefits bestowed by those universities to obtain degrees across the higher education pipeline.” *Id.* The Virginia legislature has also voted in favor of some of its state schools to follow suit in atoning for slavery. *See id.*

67. *See* Brian H. Robb, *Homeownership and the American Dream*, FORBES (Sept. 28, 2021, 7:15 AM), <https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/28/homeownership-and-the-american-dream/?sh=56420e6523b5>.

68. RAY & PERRY, *supra* note 2, at 5; *see also* Robb, *supra* note 68. Notwithstanding the atrocities of slavery, practices by administrative agencies such as the Federal Housing Authority, has created a ripple effect that persists today. *See* Kim, *supra* note 18, at 140. Thus, many have stated “no agency of the United States government has had a more pervasive and powerful impact on the American people over the past half-century than the Federal Housing Administration.” *Id.* at 151.

69. *See* Vanessa Zboreak, *Regulatory Reparations*, 14 ELON L. REV. 215, 216–17 (2022). Although congressional action on reparations has moved slowly, the executive branch has made headway on providing adequate redress. *See id.* at 216–17.

Equity and Support for Underserved Communities, which allows for a “comprehensive assessment of barriers of equity” provides the basis of this theoretical approach.⁷⁰ Under a regulatory reparations framework, the administrative state would be required to institute “horizontal changes” to the current rulemaking processes under the Administrative Procedure Act (“APA”).⁷¹ This would span across administrative agencies and the regulatory process.⁷²

This framework consists of several proposals or changes. Considering there are no current APA rules applicable to review of historical rules, or their racial effects,⁷³ the first proposal under the regulatory reparations framework would require administrative agencies to evaluate previous regulations and decisions to ascertain whether prior agency actions “created a disparate impact on minority communities and measure that impact.”⁷⁴ This proposal would entail a uniform review procedure across all agencies, requiring interagency cooperation,⁷⁵ which would be conducted by a new centralized executive agency.⁷⁶

One issue that may develop after regulatory review is picking which issue to tackle first.⁷⁷ The second proposal under the regulatory reparations framework serves to combat this through broad democratic participation in which Black Americans can petition for an issue to be prioritized in an agency’s attempt to institute reparations.⁷⁸ This collective governance model, implemented through citizen petitions, would allow Black Americans to request a review of the “racial impacts of an earlier decision, and to request agency action to redress harm.”⁷⁹ The second proposal works hand in hand with the third one, which provides checks in the agency’s decision-making process to make sure

70. *See id.*

71. *Id.* The APA “governs the process by which federal agencies develop and issue regulations.” *Summary of the Administrative Procedure Act*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/laws-regulations/summary-administrative-procedure-act> (last visited Feb. 10, 2023). These changes would place an emphasis on the need for accountability and recognition of administrative harms, remediation through future rules created, and commitment to not repeat past discriminatory methods. *See Zborek, supra* note 70, at 235.

72. *Id.* at 235.

73. *See id.* at 236.

74. *Id.* at 218.

75. *See id.* at 238. This interagency cooperation would primarily be needed due to the intersectional effects of some previous agency rules. *Id.* at 240.

76. *See id.* at 238–39.

77. *See id.* at 242.

78. *See id.* at 242–43.

79. *Id.* at 218.

that a citizen's petition is not disregarded.⁸⁰ The third proposal would subject an agency's decision, whether to review, not review, or provide redress, to judicial review.⁸¹ Further, this would require courts to employ a "hard look" standard to determine if the citizen's petition was justifiably denied.⁸²

Additionally, congressional action would be required to embed regulatory reparations into the current rulemaking process. This would require Congress to amend the current administrative procedural rules and create an obligation for agencies to conduct racial impact analyses when developing rules.⁸³

This would be done in two ways. The first would set forth a presumption within the rulemaking process that a rule will be deemed "arbitrary and capricious" if racial impact is not considered.⁸⁴ Since current rules do not require agencies to consider the effect regulations may have on Black or marginalized communities,⁸⁵ creating a presumption that a rule will be arbitrary and capricious if it does not consider racial impact shifts the burden from parties seeking redress to agencies.⁸⁶ The second way would include community-based benefits that would come from this framework's institution within the cost-benefit analysis.⁸⁷ The current analysis allows for "smuggling racism . . . under a pretense of neutrality,"⁸⁸ thus under this framework there would need to be accounting not only for economic inequities but also for harm to community cohesion, durability, and social capital.⁸⁹

Although regulatory reparations would adequately point the finger at institutions which have emboldened systemic inequalities across the Black community, there are also limitations to consider. The

80. *See id.* at 243–44. Under current APA rules, an agency is only required to consider a citizen's request in "reasonable time" with a brief statement detailing the reasons for denial. *Id.* at 244. These agency decisions are rarely overturned by the courts. *Id.* at 244.

81. *Id.* at 218.

82. *Id.* at 248.

83. *Id.* at 247.

84. *Id.* at 248.

85. *Id.* at 249. Thus, "ignor[ing] . . . racial equity concerns can pass muster under the APA." *Id.*

86. *Id.* at 251–52. If race is considered throughout rule development, "the agency, as the party with greater capacity and manpower, [would be required] to seek out information and review the existing literature and studies or to convene broader panels of experts to advise them" and would have to explain why or why not a specific rule implicates racial disparity. *Id.* at 252.

87. *Id.* at 248.

88. *Id.* at 254 (internal quotation marks omitted).

89. *Id.* at 254.

biggest would be that the changes instituted could be short lived. With a new president being elected every four or eight years comes the likelihood of change to administrative and procedural rules.⁹⁰ Thus, a new administration could do away with much of the progress created by agency personnel. Further, the recommended remedy of embedding regulatory reparations into the current rulemaking procedure by way of congressional action in itself presents another issue. Congress has yet to pass a bill to simply study reparations,⁹¹ thus it is highly unlikely that this framework would be supported; especially amongst those in Congress who would view this idea as a larger expansion of government. Finally, this framework would require a race-conscious lens to be employed in future regulations which, although some argue is necessary for racial equity, has been dealt with suspicion by many.⁹²

C. *The Municipality Framework*

Differing from the regulatory reparations framework, the municipality framework places emphasis on reparations orchestrated by local communities rather than state or federal governments. With an objective to make up for the shortcomings of achieving reparations through the judiciary, which usually dismisses claims due to being bound by precedent and doctrine,⁹³ or through private institutions, which are more likely to be ignored,⁹⁴ this framework focuses on “community-

90. See, e.g., *id.* at 237. Biden’s executive order signaled a change from the previous administrations’ efforts to roll back regulations on agency review. See *id.* Although the Obama administration did roll out certain executive orders that required regulatory reviews, this was significantly differently from the Trump administration’s efforts to reduce regulations on agency review. See *id.*

91. See discussion *infra* Part V.

92. See Tiffani Burgess, *Race-Conscious Policies — Including Affirmative Action — Are Necessary For Addressing Racial Inequity*, ACLU (Dec. 1, 2020), <https://www.aclu.org/news/racial-justice/race-conscious-policies-including-affirmative-action-are-necessary-for-addressing-racial-inequity> (“[A]lthough the Supreme Court has consistently ruled it is legal to use race as a factor in a holistic application process, it has long viewed race-conscious policies with suspicion.”).

93. Brooke Simone, *Municipal Reparations: Considerations and Constitutionality*, 120 MICH. L. REV. 345, 352 (2022). The litigation process also forces victims into adversarial situations which could traumatize the claimants and reaffirm feelings of helplessness. See *id.* Furthermore, historically “Black Americans have . . . leaned on the judicial system to address the issues of economic disenfranchisement brought about by state-sponsored social and financial bondage laws.” Burton, *supra* note 29, at 535.

94. Simone, *supra* note 94, at 353 n.49 (“Rather than considering reparations through their own initiative, some institutions’ hands have been forced. For example, the Virginia House of Delegates voted to require five colleges in the common-wealth-the University of Virginia, Virginia Commonwealth University, Virginia Military Institute, the College of

oriented social healing” rather than compensation.⁹⁵ Further, municipalities can present a better avenue in providing reparations since they are usually held “accountable to their constituents.”⁹⁶

The argument for this localized approach is grounded on two primary reasons. First, there is existing evidence that shows that municipalities are more willing to devise a reparations plan unlike state and federal governments.⁹⁷ This is supported by existing initiatives taken on by local and state governments such as the plan created in Evanston, Illinois which can be viewed as a model for establishing localized reparations.⁹⁸ Further, local policymaking, or decisions made by actors who are from or reside within the community, can have a greater impact on the lives of those that live within said community.⁹⁹ Second, localized plans allow not only for community-centered problem solving but also a unique opportunity for a greater understanding of both past and present issues.¹⁰⁰ This would permit members of the community to be able to provide input on how the plan should be constructed, and thus, would be

William & Mary, and Longwood University--to create scholarships and economic development programs for descendants of enslaved people who worked at the schools.”). *See, e.g.*, *In re African-American Slave Descendants Litig.*, 471 F. 3d 754, 754. (7th Cir. 2006).

95. Simone, *supra* note 94, at 351.

96. *Id.* at 352.

97. *See id.* at 350. Political scientist Niambi Carter stated that “[i]t’s really local activists and local actors, members of city councils . . . who are empowered in ways in their small communities to do things and to act outside of what the state would do and even the nation would do.” *Id.* (citation omitted).

98. *See* Keeshea Turner Roberts, *Reparations Can Mitigate Wealth Inequity*, ABA (Jan. 6, 2023), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/wealth-disparities-in-civil-rights/reparations-can-mitigate-wealth-inequity/. 58-R-19, Commitment to End Structural Racism and Achieve Racial Equity, was a resolution passed by the Evanston City Council in 2019 which sought to “address the historical wealth and opportunity gaps” felt despairingly amongst Black residents. *Id.* These goals centered around restoring five main areas: “(1) housing, (2) economic development, (3) education, (4) finances, and (5) history/culture.” *Id.* The city first sought to focus their efforts on the first initiative, institution of a housing program. *See id.* Due to the study ordered by the council, it was identified that there was “not only a direct correlation between specific harms and the individuals who were impacted, but also [] secondary and tertiary harms to their families and the Black community in Evanston.” *Id.* Through the initiative, the city allocated \$10 million in tax revenue from “recreational marijuana [sales] to fund reparation initiatives.” *Id.*

99. *See* Simone, *supra* note 94, at 350.

100. *See id.* at 350–51.

able to empower them.¹⁰¹ This could result in a more thought out and well formulated reparations plan.¹⁰²

Additionally, in instituting this framework, the municipality must consider three main things: who will be the beneficiary group, what will be the form of compensation, and how will the plan be funded.¹⁰³ Beneficiaries for reparations may include those that have been directly harmed,¹⁰⁴ those that have are descendants of those that have been directly harmed,¹⁰⁵ or those otherwise identified as a group of people who would benefit from reparations.¹⁰⁶ Instituting reparations for Black Americans today would likely fall into one of the latter two groups. However, providing reparations for direct descendants of those harmed presents the issue of recordkeeping, whereas, there would need to be recorded proof showing lineage to former slaves within the municipality.¹⁰⁷ Further, providing reparations to a selected group of people presents the issue of who should be allowed to determine the group defining perimeters.¹⁰⁸ These decisions can create division if created by members of the group seeking reparations.¹⁰⁹ Overall, these groups also face causation issues such as proving there is a connection from the wrongful act to those that have been directly harmed and identifying a group in which reparations may be given.¹¹⁰

Next to be considered is the form of compensation. There are four conventional types of reparation compensation: apology,¹¹¹

101. *See id.* at 350.

102. *See id.*

103. *See id.* at 353.

104. *See id.* The issue with providing reparations for those that have been directly harmed is “the problem of proof.” *Id.* When there are inadequate records of the alleged harm, there is a presumption of ineligibility. *See id.* Further, this approach does not take into account the systematic or generational trauma for the actions in which reparations is called. *See id.* at 354.

105. *Id.* at 354–55. This approach attempts to “right a wrong” although the victims of the alleged harm are deceased. *Id.* at 355. This approach also presents an issue of proof in regards to the original harm in which reparations is needed. *See id.*

106. *See id.* at 353. This approach would require defining a group in which reparations would be available if a certain criteria is met. *Id.* at 356.

107. *See id.* at 355–56.

108. *Id.* at 356.

109. *Id.* at 356.

110. *See id.* at 354–57.

111. *Id.* at 358. An apology can take the form of “historical designations of the affected site or victimized community, museums, and days of commemoration.” *Id.* (citations omitted).

investment,¹¹² reform to educational systems,¹¹³ and opportunities for those whose lives were impacted by the criminal justice system.¹¹⁴ Under a municipality plan, all four are strongly encouraged.¹¹⁵ However the goals of the municipality—whether backward-thinking, forward-thinking, emboldening the victimized community, or providing resources—will determine which compensation approach is best.¹¹⁶

Lastly, a municipal focused plan can be funded through taxpayer dollars,¹¹⁷ tax revenue from sales of a specific product,¹¹⁸ private fundraising,¹¹⁹ or through an invest/divest framework.¹²⁰ The common approach advocated to fund reparations is taxpayer dollars. This approach would provide ease in implementation as there would be no need to create a separate avenue to collect funds.¹²¹ However, pursuing an alternative such as tax revenue from sales of a specific product such as marijuana or soda may be successful in overcoming the grievances of using taxpayer dollars.¹²²

Notwithstanding the benefits of the municipality approach, there are drawbacks that come from pursuing this method such as how to overcome citizen objections and how to pay for it. For one, there may be pushback from citizens within the municipality that do not support the use of funds for these initiatives, or just do not like the idea of reparations overall. This issue flows into the issue of funding. If utilizing a taxpayer method

112. *Id.* Investment could entail direct payments, housing benefits, and community reinvestment. *Id.* However, calculating a monetary amount can be difficult. *See id.* at 358–59.

113. *See id.* at 358. This would focus on curriculum changes (providing a more truthful picture of systemic injustices within the country) or assistance in obtaining higher education. *See id.* at 364–65.

114. *Id.* at 358.

115. *Id.* at 359, 364, 366–67.

116. *Id.* at 367.

117. *Id.* “Taxpayer funding may work well for broad, national reparations. If culpability for massive atrocities like chattel slavery or Native land dispossession must be ascribed to someone (and ascribing culpability is necessary to any reparatory plan), then institutions such as the federal government make sense.” *Id.* at 368.

118. *Id.* at 367. This would entail instituting new taxes on the sale of certain products and redistributing existing sales taxes to reparations programs. *Id.* at 369.

119. *Id.* An example of this is seen in Georgetown University’s pledge to donate \$400,000 a year to community reinvestment efforts. *Id.* at 369.

120. *Id.* at 370. This involves reallocating from systems that have harmed disenfranchised communities to supportive community-based programs. *Id.* For example, redirecting funding from prison construction to a Community Reinvestment Fund. *See id.*

121. *Id.* at 367–68. This also presents an issue, as some argue that taxpayers are not directly responsible for the actions of elected officials, and thus, should not be entitled to pay. *Id.* at 368.

122. *Id.* at 368–69. *See also* discussion *supra* note 99.

to fund the plan, a municipality with members that do not support reparations, may face contention from these members for using their taxpayer dollars to fund it. Further, with \$10 trillion being estimated as the total amount needed to provide an effective reparations package,¹²³ it may not be economically feasible for certain communities to fund a package. Finally, although certain funding practices could be used in lieu of taxpayer dollars, others, such as instituting a soda tax, would in essence penalize the beneficiaries of reparations.

D. The International Human Rights Framework

The third and final framework this Comment will analyze is the international human rights framework advanced by the United Nations. The United Nations International Convention on the Elimination of All Forms of Racial Discrimination requires Member States to provide access to effective remedies and justice for any human rights violations.¹²⁴ This includes adequate reparations.¹²⁵ Indeed, even international organizations, in which the United States is a member, have recognized the importance of providing a reparations plan to descendants of slaves.¹²⁶

The United Nations has stated that measures used “must be adequate, effective, prompt, and . . . proportional to the gravity of the violations and the harm suffered.”¹²⁷ Four models can be utilized in doing this. Those models include (1) restitution, (2) compensation, (3) rehabilitation, and (4) satisfaction.¹²⁸ The first measure, restitution, requires that a victim be restored to the previous state they were in before the violation happened.¹²⁹ The second measure, compensation, requires that the member state compensate for any economically

123. *Id.* at 351.

124. Tendayi Achiume (Special Rapporteur), Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Racial Intolerance, U.N. Doc. A/74/321, at 13 (Aug. 21, 2019).

125. *See id.* at 14.

126. *See* Press Release, UN Human Rights Expert Calls on States to Make Reparations for Colonialism and Slavery, U.N. Press Release (Oct. 29, 2019) (“Reparations are a vital aspect of a global order genuinely committed to the inherent dignity of all, irrespective of race, ethnicity or national origin.”).

127. *Reparations*, U.N. HUM. UNITED RTS. OFFICE OF THE HIGH COMM’R, <https://www.ohchr.org/en/transitional-justice/reparations> (last visited Dec. 31, 2023).

128. *Id.*

129. *Id.* This would include “restoration of liberty, reinstatement of employment, return of property, return to one’s place of residence.” *Id.*

assessable damages such as earning or property losses.¹³⁰ The third measure, rehabilitation, requires care for health and mental well-being.¹³¹ The fourth measure, satisfaction, includes a total stop of continuing violations.¹³²

The international law framework would provide a path to have real conversations on issues that would entitle reparations. However, the main concern that comes from the approach derives from its idealistic nature. It focuses more on recognizing the harm rather than providing substantive solutions. There have been conversations already on reparations. Albeit more need to take place, but in communities that seek action *now*, this approach may seem like another route to keep speaking on issues in which no resolution will ever be given.¹³³

IV. CORRECTIVE JUSTICE — NEW JERSEY: THE SLAVE STATE OF THE NORTH

La'Tesha Sampson moved her home and business to Clark in 2020 — the same year she helped organize a Black Lives Matter protest... As a Black woman, Sampson is a visible minority in Clark, a town of more than 15,500 with fewer than 250 Black residents, according to Census figures...She had a visceral reaction when she heard secret recordings of longtime Mayor Sal Bonaccorso using racial slurs to refer to Black people... [A]udio recordings made by a police whistleblower that capture the mayor and police leaders referring to Black people as “spooks,” “shines” and the N-word. The news organization also revealed the details of a secret 2020 settlement that paid the whistleblower, former police Lt. Antonio Manata, and his attorney \$400,000 to keep a lid on the scandal and allowed Manata to remain on the payroll for more than two years without working... The revelations were the latest in a series of controversies in the

130. *Id.* This may also include moral damages. *Id.*

131. *Id.* This may include “legal and social services.” *Id.*

132. *Id.* This may include “public apologies, judicial and administrative sanctions, memorials, and commemorations.” *Id.*

133. See Adam Beam, *11 US Mayors Pledge to Pay Reparations for Slavery to Small Groups of Black Residents*, USA TODAY (June 19, 2021, 12:22 PM), <https://www.usatoday.com/story/news/nation/2021/06/19/reparations-slavery-pledged-11-us-mayors-pilot-program/7753319002/> (“Black Americans don't need another study that sits on a shelf,” said St. Louis Mayor Tishaura Jones, the city's first Black female mayor and a member of the group, “[w]e need decisive action to address the racial wealth gap holding communities back across our country.”).

small Union County town that has long had a reputation among Black people as a racist place.¹³⁴

Overall, the theories to institute reparations vary in form and substance with each carrying their own positives and negatives. This part will put these theories to the test by applying them to the state of New Jersey. As recognized previously in this Comment, there is an inextricable link from slavery to post-slavery injustices and present-day disparities which warrant reparations from Black Americans today.¹³⁵ Following this trend, Section IV.A will first build the case for why reparations would be justified for the Black Americans living within the state of New Jersey. As done previously in this Comment, this will be presented through a dignity wrongs analysis. Section IV.B will apply the aforementioned reparations theories discussed in Part III to determine their futility in New Jersey.

A. *What Happened & Who Did It?*

Though typically left unscathed from slavery criticisms, the North had significant involvement in slavery,¹³⁶ and thus, subsequent discrimination practices¹³⁷ that would warrant legal redress. New Jersey in particular was a state deeply entrenched in these practices.¹³⁸ With over two thirds' of northern slaves living within the state,¹³⁹ New Jersey had more slaves than the entire North combined.¹⁴⁰ Profits from the

134. S.P. Sullivan, et al., *N.J. Town Grapples With History of Racism After Leaders' Slurs Surface in Secret Recordings*, N.J. ADVANCE MEDIA (last updated Apr. 11, 2022, 3:37 PM), <https://www.nj.com/news/2022/04/nj-town-grapples-with-history-of-racism-after-leaders-slurs-surface-in-secret-recordings.html>.

135. See *supra* Part II.

136. See Adrian Brettle, *Myths & Misunderstandings: The North and Slavery*, THE AM. CIV. WAR MUSEUM (Sept. 20, 2017), <https://acwm.org/blog/myths-misunderstandings-north-and-slavery/>. The institution of slavery directly influenced Northern economies and wealth for many of their more well-off residents. See *id.*

137. See *id.*

138. See Eric Kiefer, *Newark Residents Push For Slavery Reparations On Federal, State Levels*, PATCH (Jan. 27, 2023, 10:06 AM), <https://patch.com/new-jersey/newarknj/newark-residents-push-slavery-reparations-federal-state-levels>.

139. *Id.*

140. Scott Novakowski et al., *We Are 1844 No More: Let Us Vote*, N.J. INST. FOR SOC. JUST. 6, https://njsj.org/wp-content/uploads/2023/04/We_Are_1844_No_More_Report-1.pdf, https://www.njsj.org/1844nomorereport2017#_ednref38 (last visited Feb. 20, 2023).

institution of slavery enabled the building of major cities such as Newark and Bergen County.¹⁴¹

The state was also resistant to anti-slavery efforts. New Jersey's state legislature refused to ratify the Thirteenth Amendment which served to abolish slavery within the country.¹⁴² Further, slavery was only officially abolished within the state on January 23, 1866; six months after slaves in Texas were declared free on Juneteenth.¹⁴³ Thus, New Jersey was not only the "slave state of the North" but one of the last states in the country to eliminate slavery.¹⁴⁴

Due to federal and state policies and practices, from New Jersey's history of slavery grew subsequent practices of racism¹⁴⁵ that led to racial disparities which travel throughout the state of New Jersey and persist today.¹⁴⁶ Following the end of slavery, practices such as racially restrictive covenants coupled with federally backed regulations served to keep Black New Jerseyans in "undesirable areas" within the state.¹⁴⁷ Exclusion from wealth building has led to the state having a racial wealth

141. Noelle Lorraine Williams, *New Jersey, The Last Northern State to End Slavery*, NJ.GOV, <https://nj.gov/state/historical/his-2021-juneteenth.shtml> (last visited Feb. 22, 2023). Prior to the Civil War, New Jersey instituted legislation to prolong the end of slavery. *Id.* In 1804, the state passed the "Gradual Abolition of Slavery law—an act that delayed the end of slavery in the state for decades. It allowed for the children of enslaved Black Americans born after July 4, 1804, to be free only after they attained the age of twenty-one for women and twenty-five for men. Their family and everyone else near and dear to them, however, remained enslaved until they died or attained freedom by running away or waiting to be freed." *Id.* Since most did not live past 40 years old, this law inadvertently made Black Americans slaves for half of their lives. *Id.*

142. *Id.* Section One of the Thirteenth Amendment states: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. CONST. Amend. XIII, § 1.

143. Williams, *supra* note 142.

144. *See id.*

145. *See, e.g.,* Tennyson Donyéa, *New Jersey Has Struggled for Centuries to Talk About Reparations. Can that Change in 2022?*, WHY? (Feb. 24, 2022, 10:35 AM), <https://why.org/articles/new-jersey-has-struggled-for-centuries-to-talk-about-reparations-can-that-change-in-2022/>.

146. Kiefer, *supra* note 139; Donyéa, *supra* note 146. This has led to a "massive amount[] of underinvestment in Black and brown communities." Donyéa, *supra* note 146.

147. *See Say the Word. Reparations*, N.J. INST. FOR SOC. JUST., <https://www.njisj.org/>. Restrictive covenants in New Jersey have prohibited the Black community within the state "from occupying, purchasing or leasing property." *Id.* This in turn has caused Black people to be pushed into "undesirable areas," and thus, led "to increases in poverty and health issues among the Black community." *Id.* Additionally, other wealth-building tools such as the GI Bill, which helped World War II servicemen obtain stipends and loans with low interest, excluded about 25,000 Black men. *Id.*

gap of over \$300,000.¹⁴⁸ This is the largest in the country and about “double the national average.”¹⁴⁹ Present day discrimination persists as members of the Black community within the state have been prime targets for predatory lending practices.¹⁵⁰ New Jersey also has the sixth most segregated schools, nationally, for Black students.¹⁵¹ Further, the Sentencing Project Report states that Black residents of New Jersey are 12.5 times more likely to be arrested and subsequently incarcerated than white residents, which is “more than double the national rate.”¹⁵²

B. Corrective Justice Through Reparations Approaches¹⁵³

1. Regulatory Reparations

The regulatory reparations approach could be successful in a state such as New Jersey, however, there are numerous limitations that must be overcome first. During the regulatory review phase,¹⁵⁴ executive agencies such as the Department of Housing and Urban Development (“HUD”) would need to determine the amount of disparity created by the Homeowners Loan Corporation’s (“HOLC”) in practices that limited Black homeownership within the state.¹⁵⁵ Further, the Consumer Protection Bureau may analyze the gaps in protection that led to many within the New Jersey Black community being targets of predatory

148. See N.J. INST. FOR SOC. JUST., MAKING TWO NEW JERSEY’S ONE: CLOSING THE 300,000 RACIAL WEALTH GAP IN THE GARDEN STATE 1, 4 (2022).

149. WILLIAMS, *supra* note 142. “The New Jersey Institute For Social Justice reported that the median net worth for white families in New Jersey is \$352,000, while the median net worth for Black families is \$6,100.” *Id.* This has been traced to “slavery, centuries of racist policies, and discriminatory banking practices.” Donyéa, *supra* note 146.

150. See *Say the Word. Reparations*, *supra* note 148. *Reparations*, NEW JERSEY INSTITUTE FOR SOCIAL JUST., <https://www.njisj.org/>. These predatory lending practices allowed banks to offer those seeking to buy a home subprime loan, which have higher interest. See *id.* Unable to pay off their debt, they likely defaulted and faced with foreclosure. See *id.*

151. *Id.* Williams, *supra* note 180. New Jersey also presents disparities in discipline, where “Black students are 3.1 times more likely to be suspended than white students” and access to higher “achieving classrooms” where “white students ... [are] 2.5 times as likely as Black students to be placed in AP classes.” N.J. INTERAGENCY TASK FORCE TO COMBAT YOUTH BIAS, AN ANTI-BIAS VISION FOR THE NEXT GENERATION 4–5, 24 (2020). This has been noted as an after effect of systemic racism within the state. See *id.*

152. Donyéa, *supra* note 146.

153. After analyzing, “the specific ways in which [Black] Americans have been injured and traumatized,” the next step in a dignity wrong analysis is to provide a kind of corrective justice to redress the damage. Miller, *supra* note 7, at 54.

154. See Zboreak, *supra* note 70, at 218.

155. See *Say the Word. Reparations*, *supra* note 148.

lending practices during in the mid-twentieth century and then again during the Great Recession.¹⁵⁶ However, since this approach focuses on redress provided by federal executive agencies, it misses an opportunity to penalize systemic and legally accepted state entity practices, such as restrictive covenants, which also warrant conversation.¹⁵⁷

During the petition process,¹⁵⁸ Black New Jerseyans may flag to the U.S. Department of Education the segregated nature of New Jersey's public schools as well as the disparity of outcomes among these schools.¹⁵⁹ Further, they may petition to the Department of Justice, namely the Federal Bureau of Prisons, to inform it of the disparity in incarceration within the state.¹⁶⁰ They may suggest during this process that a presumption of racially disparate impact be made within current rules of the aforementioned agencies.¹⁶¹ Notwithstanding the power that such accountability can provide the Black community within New Jersey, many of these changes are contingent on who leads the executive branch, the willingness of agencies to provide detailed analyses of their decisions, and agencies' desire to correct their rules.

2. Municipality Approach

The municipality approach could have success in New Jersey if certain restraints can be overcome. Under the municipality approach, Black New Jerseyans would need to determine the requisite courses of action for the three main factors under the framework: beneficiary, compensation, and funding.¹⁶² The main choice of beneficiaries within the state would be either descendants of slaves or another group identified based on ascertainable harm. If the former is chosen, the issue of proof of direct lineage can likely be overcome since New Jersey does have records of slavery sales and freedom papers.¹⁶³

With the choice of ascertaining a harmed group which could benefit from reparations, there can be multiple different ways to proceed. That could be either Black Americans currently living in the state no matter

156. *See id.*

157. *See id.*

158. This is the second step within the framework. *See Zborek, supra* note 70, at 218.

159. *See* NEW JERSEY INTERAGENCY TASK FORCE TO COMBAT YOUTH BIAS AN ANTI-BIAS VISION FOR THE NEXT GENERATION, *supra* note 152, at 5–6, 8 (2020).

160. *See* Donyéa, *supra* note 146.

161. *See* Zborek, *supra* note 70, at 246–47.

162. *See* Simone, *supra* note 94, at 353.

163. *See generally* Records Relating to Slaves and Children of Slaves, STATE OF N.J. DEPT OF STATE, <https://www.nj.gov/state/archives/catsuslaves.html> (last visited Feb. 25, 2023).

how long, those that have lived here for a certain number of years, or only those that were born within the state. However, they would need to craft a detailed showing of the harm they have faced, due to the issue of causation, and would need to be mindful in who is determining the scope of the group to minimize contention.

Next, in considering compensation, New Jersey should choose a plan that combines apology, investment, reform to educational systems, and opportunities for those whose lives were impacted by the criminal justice system. This step should utilize a forward-thinking approach which emboldens the community as this would allow for progress in combating prevailing systemic issues.¹⁶⁴

Last, New Jersey would need to determine how it would want to fund this plan. This presents the biggest dilemma. Using taxpayer dollars could be an option; however, this may experience pushback from state citizens.¹⁶⁵ Considering the legalization of marijuana within the state,¹⁶⁶ a tax on marijuana sales, like that seen in Evanston, could be profitable. Privatized funding could also be an option and is something certain institutions within the state have already endeavored to complete.¹⁶⁷ Finally, this plan would allow citizens to be directly involved within the reparations process which many are already deeply passionate about.

3. International Law Framework

Finally, the international law framework may be a challenge to implement within New Jersey. First, Black New Jerseyans cannot be restored to a state before the violation occurred because, like any other community of Black people within the nation, Black New Jerseyans have never experienced any other disposition than the one they are in. Thus, it would be hard to put a restitution value on these inequalities.¹⁶⁸ Further, although providing health and/or legal services would be a

164. See generally N.J. INST. FOR SOC. JUST., MAKING THE TWO NEW JERSEYS ONE: CLOSING THE \$300,000 RACIAL WEALTH GAP IN THE GARDEN STATE 1 (2022).

165. See, e.g., Breeanna Hare and Doug Criss, *Six Questions About Slavery Reparations, Answered*, CNN (Aug. 15, 2020, 7:11 AM), <https://www.cnn.com/2020/08/15/us/slavery-reparations-explanation-trnd/index.html> (showing that some opponents are against reparations because “slaves are dead, [and] no white person living today owned slaves”).

166. See New Jersey’s Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization (CREAMM) Act, 2021 N.J. Laws 16.

167. See Deborah Yaffe, *Princeton and Slavery: Our Original Sin*, PRINCETON ALUMNI WEEKLY (Nov. 8, 2010), <https://paw.princeton.edu/article/princeton-and-slavery-our-original-sin>.

168. But see Kim, *supra* note at 18, at 156. Due to the creation of racist housing policies, Black Americans have been unable to benefit from over \$1.239 quintillion dollars in 2019 dollars. *Id.*

benefit to the Black community within the state, these measures would only address some of the issues that plague Black New Jerseyans. Lastly, public apologies have been done.¹⁶⁹ Now, like much of the Black population within the county, Black New Jerseyans would like to see action.

V. CONCLUSION

If Martin Luther King had lived[,] he would be 84 now. We can only imagine how he would see things today. But as the world celebrates his dream [almost 60] years later, it's important to remember how King himself saw it in his own lifetime: as a vision of a promise still unkept.¹⁷⁰

It can certainly be stated that Black Americans have never experienced an “America where ‘opportunity is real, and life is free, [e]quality is in the air we breathe.’”¹⁷¹ However, the opportunity for providing reparations may be on the horizon or even accomplished in some regions of the country. Indeed, many leaders, both on the national and state level, have endeavored to study and formulate plans to provide Black Americans with reparations. For example, U.S. House Resolution 40 (“H.R. 40”) is a Congressional Act that would establish a federal commission to examine the impact slavery and systematic racism has had on African Americans.¹⁷² From this research, the commission would recommend proposals for what reparations should involve.¹⁷³ Furthermore, although H.R. 40 has not seen much movement since 2019,¹⁷⁴ some states have also recently sought to mimic this structure by creating their own state specific commissions to analyze and provide reparations.¹⁷⁵

169. See Bonnie Goldstein, *New Jersey's Apology for Slavery*, SLATE (Jan. 8, 2008, 2:58 PM), <https://slate.com/news-and-politics/2008/01/new-jersey-s-apology-for-slavery-2.html>.

170. Andrew K. Franklin, *King in 1967: My Dream has 'Turned into a Nightmare'*, NBC NEWS (Aug. 27, 2013, 11:52 AM), <https://www.nbcnews.com/nightly-news/king-1967-my-dream-has-turned-nightmare-flna8c11013179>.

171. See Gefeke, *supra* note 4, at 685.

172. See H.R. 40, 117th Cong. (2021); see also Stolberg, *supra* note 1.

173. See *id.* In 2019, the House of Representative voted for the resolution to be advanced but it has not seen much movement since. *Id.*

174. See *id.*

175. See, e.g., Adam Beam, *11 US Mayors Pledge to Pay Reparations for Slavery to Small Groups of Black Residents*, USA TODAY (June 19, 2021, 12:22 PM),

<https://www.usatoday.com/story/news/nation/2021/06/19/reparations-slavery-pledged-11-us-mayors-pilot-program/7753319002/>; Maysoon Khan, *New York Will Set Up a*

This Comment aimed only to present frameworks of reparations side by side to analyze their futility in a state which many have forgotten or did not know had ties to slavery. However, to provide comprehensive relief, it is imperative that the country relearn, or learn, America's racial history and the modern-day effects of slavery that justify reparations.¹⁷⁶ Notwithstanding the difficulties that may come about, the next step in instituting reparations is not difficult: *doing something*.

Commission to Consider Reparations for Slavery, AP (Dec. 19, 2023, 7:10 PM), https://apnews.com/article/new-york-reparations-slavery-commission-18578dfe233c1faeccfc5213050b52d3?utm_source. (“New York state will create a commission tasked with considering reparations to address the persistent, harmful effects of slavery in the state, under a bill signed into law by Gov. Kathy Hochul.”).

176. See, e.g., Richard Rothstein, *What Have We—De Facto Racial Isolation or De Jure Segregation?*, ABA (July 1, 2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/racial_isolation_or_segregation/.1, 2014).1, 2014). *But see*, Anemona Hartocollis & Eliza Fawcett, *The College Board Strips Down It's A.P. Curriculum for African American Studies*, N.Y. TIMES (Feb. 1, 2023), <https://www.nytimes.com/2023/02/01/us/college-board-advanced-placement-african-american-studies.html> (“[T]he College Board released on Wednesday an official curriculum for its new Advanced Placement course in African American studies – stripped of the subject matter that has angered the governor and other conservatives. . . . [This subject matter includes] Black writers and scholars associated with critical race theory, the queer experience, and Black feminism.”).